



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: University of Dayton Research Institute

File: B-245431

Date: January 2, 1992

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for the protester.

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party.

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the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Contention that agency acted unreasonably in failing to upgrade protester's evaluation as a result of changes made in its best and final offer (BAFO) is denied where the record shows that the evaluation of the protester's initial proposal was based on a conclusion that the protester would, in its BAFO, both clarify its relationship with a major subcontractor and increase the number of proposed hours for the subcontractor.

2. Protester's claim that evaluators unreasonably assessed awardee's proposal as low risk is denied where protester fails to challenge the basis for the evaluation conclusions, and offers arguments that, even if true, fail to establish that the conclusions were unreasonable.

3. Protest against decision to award to higher cost, higher technically evaluated offeror is denied where the solicitation provided for award to offeror whose proposal was determined most advantageous to the government and where agency made a reasonable determination that the technical superiority and lower risk of the awardee's proposal outweighed its higher cost.

DECISION

University of Dayton Research Institute (UDRI) protests the award of a contract to General Dynamics, Convair Division (GD), under request for proposals (RFP) No. F33615-91-R-0001, issued by the Department of the Air Force for research and development of improved human performance simulation

methods for computer graphics, UDRI claims that the Air Force improperly evaluated its proposal by failing to consider changes made in its best and final offer (BAFO), and improperly evaluated GD's proposal by irrationally assessing the proposal as low risk. UDRI also claims that the Air Force unreasonably selected GD for award despite its higher proposed cost.

We deny the protest.

BACKGROUND

The RFP, issued on January 8, 1991, contemplated the award of a cost-plus-award-fee contract for research and development effort in the area of emerging and improved technologies related to human modeling using computer graphics. The research effort here will culminate in development of workstation capabilities in human performance simulation.

The solicitation advised that award would be made to the offeror with the best overall proposal based on the following evaluation factors: technical merit; cost reasonableness, realism, and completeness; and management capabilities. Offerors were advised that technical merit would be more important than cost, and cost would be more important than management capabilities. Nonetheless, the solicitation reserved the right to make award to the proposal most advantageous to the government, advising that it might award to other than the lowest cost offeror, or other than the highest technically rated offeror.

Within the technical merit evaluation factor, the RFP listed four subfactors, in descending order of importance, related to technical acceptability: soundness of approach; understanding the problem; special technical factors; and compliance with requirements. The subfactors of soundness of approach and understanding the problem each included evaluation elements relating to risk: the soundness of approach subfactor included an evaluation element called risk reduction; the understanding the problem subfactor included an element called risk assessment. In addition, in explaining the evaluation subfactors, the RFP stated that past performance would be considered in the evaluation of each subfactor and that "[o]fferors without relevant past performance will not be penalized."

Five offerors submitted proposals in response to the RFP by the February 27 due date. After reviewing the initial proposals, the Air Force determined that two of the proposals were unacceptable, and assigned adjectival ratings and risk assessments to the three remaining acceptable

proposals, including those submitted by UDRI and GD. The GD offer received the highest rating of the three proposals--exceptional--and the lowest risk assessment--low. UDRI received a rating of acceptable-plus, and a risk assessment of moderate; the third offeror received a rating of acceptable, and a risk assessment of high.

After conducting discussions, the Air Force received BAFOs from the three acceptable offerors on June 10. Upon reviewing the BAFO submissions, the Air Force evaluators determined that there was no basis for changing the initial ratings or risk assessments awarded to UDRI or the third company. Although UDRI proposed the lowest cost, the source selection authority concluded that the higher technical rating given GD justified award at the higher cost. The total proposed costs of GD and UDRI is set forth below:

	<u>Cost</u>	<u>Award Fee</u>	<u>Total</u>
GD	\$4,108,779	607,490	\$4,716,269
UDRI	3,715,120	None ²	3,715,120

On August 19, the Air Force awarded the contract to GD, and this protest followed.

DISCUSSION

Failure to Reevaluate UDRI's BAFO

UDRI first argues that the Air Force should have reevaluated its proposal based on revisions to its initial proposal included in its BAFO.¹ UDRI explains that it was advised

¹The range of adjectival ratings used by the evaluators was exceptional, acceptable, and marginal. Evaluators could distinguish an offeror's rating in these categories by awarding an additional plus or minus indicator to the adjective to create a high, middle, or low range within the category--e.g., acceptable plus, acceptable, or acceptable minus.

²Although the RFP envisioned a cost-plus-award-fee contract, UDRI proposed to perform the research on a cost-only basis, and declined to include a fee.

³UDRI's initial letter of protest also included several other contentions, each of which was addressed in detail in the Air Force's report. In its comments on the agency report, UDRI did not respond to several of the agency's arguments and stated that but for the three issues discussed in this decision--the failure to evaluate UDRI's BAFO, the payment of a premium to the awardee, and the determination that the awardee's proposal offered low risk--it would not

during negotiations about concerns that it had not proposed a sufficient level of effort for one of its major subcontractors, the University of Pennsylvania (Penn). To address these concerns, UDRI clarified Penn's role, and increased its level of effort from 1,200 hours in the initial proposal to 4,600 hours in the BAFO. According to UDRI, it was unreasonable not to raise its initial proposal score given the magnitude of the increased subcontractor commitment.

There is no factual dispute between the Air Force and UDRI on this issue. The agency's report shows that it specifically directed UDRI to increase the level of effort for Penn. This direction is memorialized in a memorandum of negotiations appended to the agency's request to UDRI for a BAFO. In addition, the Air Force memorandum directs UDRI to provide further evidence of Penn's willingness to participate as a subcontractor, and to provide more information about the use of certain software developed by individuals there. As UDRI claims, it responded to each of these issues, labeled "technical concerns" in the Air Force memorandum, and among other things, significantly increased Penn's level of commitment. Nonetheless, the Air Force concluded that it had no basis for upgrading UDRI's original technical evaluation.

UDRI's modifications to its BAFO regarding the role of Penn clearly addressed (and probably answered) the concerns raised by the Air Force evaluators. However, our review of the agency's evaluation materials related to UDRI's initial proposal indicates that UDRI had already received evaluation credit for its proposed use of Penn as a subcontractor. Specifically, the evaluation materials state that the "overall evaluation of the UDRI proposal as [acceptable-plus] weighed heavily on the participation of both subcontractors at appropriate levels of effort. Hence, UDRI should be asked to clarify its intentions regarding Penn's specific role and required level of effort."

Since the agency's report shows that UDRI had already received credit for its use of this subcontractor, we reject the claim that it was unreasonable for the Air Force to refuse to upgrade UDRI's evaluation as a result of the changes in its BAFO. Contracting officers are only required to consider the effect on proposals of any changes contained in an offeror's BAFO, not to formally rescore such BAFO's in every instance. See PRC Kentron, Inc., B-230212, June 7, 1988, 88-1 CPD ¶ 537.

continue with this protest. Accordingly, we consider those issues abandoned, and will not discuss them further. See Atmospheric Research Sys., B-240187, Oct. 26, 1990, 90-2 CPD ¶ 338.

Unreasonable Assessment of Risk

UDRI next argues that the Air Force had no reasonable basis for its assessment of the GD proposal as low risk. In support of this contention, UDRI sets forth, in skeletal form, seven alleged facts that, in its view, make the risk assessment of GD's proposal unreasonable.

As a preliminary matter, we note that UDRI appended to its comments an attachment that purported to explain its factual contentions in detail; however, the contentions set forth in the comments generally are not reflected in the attachment.⁴ In addition, at least one of the allegations in UDRI's comments on the agency report is contradicted by the attachment.⁵ The remaining allegations can be summarized as follows: (1) that GD has no experience with the software package known as Crew Chief, and has made no arrangement for assistance with the software from UDRI, the developer of the Crew Chief software; (2) that GD's software, and its prior experience, involves robotic rather than human modeling; and (3) that GD's inexperience with the Crew Chief and Jack software packages makes it unlikely that GD can meet the RFP's research schedule.

In its response to the protest, the Air Force provided its evaluation materials to explain the agency's rationale for concluding that the GD proposal contained low risk for the government. Specifically, the evaluation notes that the GD proposal identifies 12 points of technical risk and provides a detailed discussion of risk mitigation strategies and procedures. The evaluation further notes that the GD proposal offers to use its own human-modeling software if other, more advanced, software packages prove to be less than optimal for the Air Force's purposes.

⁴Much of the attachment contains UDRI's views of the weaknesses in GD's proposal. The remainder merely disagrees with the agency's evaluation of various facets of the GD proposal. UDRI does not identify these contentions as additional bases for protest, instead stating that but for the three claims presented in its comments it would abandon the protest.

⁵UDRI states in its comments that "[GD] has no experience with Jack source code." (Jack--not an acronym--is the name of a software used to create human animation.) In the attachment supporting the comments, UDRI states that "[t]hey [GD] have worked with Jack source code before on one occasion."

In considering protests against an agency's evaluation of proposals, we will examine the record to determine whether the evaluation was reasonable and consistent with the evaluation criteria. Irwin & Leighton, Inc., B-241734, Feb. 25, 1991, 91-1 CPD ¶ 208. Here, as a starting point, our review of the record leads us to conclude that several of UDRI's contentions regarding GD may be inaccurate. Not only are UDRI's pleadings internally inconsistent on the issue of GD's prior experience with the Jack source code (as described above), but GD denies other UDRI characterizations of its expertise, and counters with examples of specific experience with the software packages in question.

Next, we note that UDRI challenges none of the comments of the evaluators supporting their conclusions regarding GD's proposal. Rather, UDRI argues, in essence, that GD lacks experience and speculates that GD will not be able to meet the deadlines in the RFP. UDRI's contention that GD's evaluation should reflect this claimed lack of experience is inconsistent with the provision in the evaluation scheme advising that offerors would not be penalized for a lack of prior experience. In our view, UDRI's claims fail to show that the agency evaluation of GD's proposal was unreasonable because they do not address the basis for the evaluation conclusions, and because they urge consideration of experience issues in violation of the clear terms of the solicitation.

Unreasonable Selection Decision

Finally, UDRI contends that the Air Force unreasonably selected GD for award despite GD's higher proposed cost. As explained above, the RFP here anticipated award of a cost-plus-award-fee contract. GD proposed a cost of \$4,108,779 and a fee of \$607,490, for a total of \$4,716,269. UDRI, on the other hand, chose to forgo an award fee and instead proposed a simple cost-reimbursement contract totaling \$3,715,120. The Source Selection Official determined that GD's proposal was the most advantageous to the government because its technical superiority and low risk assessment outweighed its higher proposed cost.

In a negotiated procurement, the government is not required to make award to the firm offering the lowest cost unless the RFP specified that cost will be the determinative factor. Antenna Prods. Corp., B-236933, Jan. 22, 1990, 90-1 CPD ¶ 82. As explained above, the RFP here clearly stated that technical merit would be more important than cost. In such cases, agency officials have broad discretion in determining the manner in which they will make use of the technical and cost evaluation results. Institute of Modern Procedures, Inc., B-236964, Jan. 23, 1990, 90-1 CPD ¶ 93. Award to a more highly rated, higher cost offeror is proper

where the selection official reasonably determines that the cost premium involved is justified, considering the technical superiority of the selected offeror's proposal. Stewart-Warner Elec. Corp., B-235774.3, Dec. 27, 1989, 89-2 CPD ¶ 598.

As explained above, the contracting officer concluded that GD's rating of exceptional and its low-risk assessment summarized a proposal far superior to the lower-priced UDRI offer. Thus, the contracting officer chose the GD proposal as the offer most advantageous to the government. Although UDRI complains of the agency's decision to award to GD, our review of the record, and of UDRI's other contentions, leads us to conclude that the agency acted reasonably in selecting GD for award. Honeywell, Inc., B-238184, Apr. 30, 1990, 90-1 CPD ¶ 435.

The protest is denied.


for James F. Hinchman
General Counsel